

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0070P

Sales Tax

For the month October 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a monthly sales tax return for the month of October 2002.

The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the tax coupon book was sent late by the Department.

According to the taxpayer, in October 2002, the taxpayer opened a new location and applied for an account with the Department. The taxpayer did not receive the sales tax coupon book until January 2003 which caused the October 2002 return to be filed late.

According to Department records, the taxpayer did not register with the Department until January 8, 2003, and therefore, the Department was not able to send the sales tax coupon book in 2002.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties as the taxpayer did not register until January 8, 2003. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.